

8-2-1988

Memorandum: Columbine Venture Fund II Final Agreement

Terence Winters

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DP

MASTER
8/2/88

MEMORANDUM

August 2, 1988

TO: General Partners
FROM: Terry
SUBJECT: Closing Materials, CVF-II

Attached are the final copies of the Limited Partnership and General Partnership Agreements, the legal opinions, side letters and Certificate of Limited Partnership of CVF-II. Please destroy all other drafts that you have and use this as your reference package. A copy will be kept in our fire files.

Cooley, Godward will be retaining the original signature pages in their vault, so we have no need to worry about this aspect. This is their usual practice, but if any of you objects, we could always reconsider and possibly keep them in our own bank safety deposit box.

5321k

Cooley Godward Castro Huddleson & Tatum

Attorneys at Law

*One Maritime Plaza
20th Floor
San Francisco
CA 94111-3580
(415) 981-5252
Telex: 380815
COOLEY SFO
FAX: (415) 951-3699*

*Five Palo Alto Square
4th Floor
Palo Alto CA 94306
(415) 494-7622*

*4675 MacArthur Court
Suite 1400
Newport Beach CA 92660
(714) 476-5252*

July 26, 1988

To the Limited Partners of
Columbine Venture Fund II, L.P.

In connection with the closing of Columbine Venture Fund II, L.P. ("CVF II"), I am pleased to enclose the following:

1. The CVF II Limited Partnership Agreement with your original signature page as signed by the general partners of Columbine Venture Management II and copies of the signature pages of your fellow investors;
2. Our legal opinion regarding the formation of CVF II;
3. Our legal opinion regarding the tax status of CVF II;
4. A side letter addressed to all limited partners with respect to actions which might cause CVF II to become a "publicly traded partnership";
5. Side letters addressed to Mellon Bank and the YMCA Retirement Fund regarding the operation of CVF II as a "venture capital operating company";
6. A side letter addressed to the Public Employees' Retirement Association of Colorado regarding distributions from CVF II; and
7. The Certificate of Limited Partnership of CVF II.

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It has been a pleasure to work with you on this transaction. If we can be of further assistance, please do not hesitate to call me or Craig Dauchy.

Sincerely,

Daniel W. Frank

Daniel W. Frank

DWF:hcc
Enclosures

cc: Craig E. Dauchy, Esq.
Terence E. Winters ✓

Cooley Godward Castro Huddleson & Tatum

Attorneys at Law

June 30, 1988

*One Maritime Plaza
20th Floor
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(415) 981-5252
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COOLEYSFO
FAX: (415) 951-3699*

To the Limited Partners of
Columbine Venture Fund II, L.P.
Listed on Exhibit A

*Five Palo Alto Square
4th Floor
Palo Alto CA 94306
(415) 494-7622*

We have acted as counsel for Columbine Venture Fund II, L.P., a Delaware limited partnership (the "Partnership"), in connection with the organization of the Partnership. This opinion is being given at your request. Except as otherwise defined herein, capitalized terms used but not defined herein have the meanings given them in the Limited Partnership Agreement of the Partnership, dated June 30, 1988 (the "Agreement").

In connection with this opinion, we have examined and relied upon originals or copies certified to our satisfaction, of such records, documents, certificates, opinions, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. As to certain factual matters we have relied upon certificates of one or more general partners of the General Partner and have not sought independently to verify such factual matters.

In rendering this opinion, we have assumed the genuineness and authenticity of all signatures on original documents, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, and the due authorization, execution and delivery of all documents (except the due authorization, execution and delivery by the General Partner of the Agreement), where authorization, execution and delivery are prerequisites to the effectiveness of such documents. We have also assumed that all individuals executing and delivering documents had the legal capacity to so execute and deliver.

Our opinion is expressed with respect only to the federal laws of the United States of America and the Delaware Revised Uniform Limited Partnership Act. We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any other jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof.

We have assumed that the business will be conducted only in the manner set forth in the Agreement and, in particular, that the Limited Partners will not participate in the affairs of the Partnership except to the extent expressly provided for in the Agreement.

On the basis of the foregoing and in reliance thereon, we are of the opinion that:

1. The Partnership is a limited partnership duly formed and validly existing under the Delaware Revised Uniform Limited Partnership Act.

2. So long as the Partnership maintains its existence in accordance with the provisions of the Delaware Revised Limited Partnership Act, the liability a Limited Partner who takes no part in the control of the Partnership's business for the obligations of the Partnership shall be limited to the capital contribution which such Limited Partner is obligated to make to the Partnership (including, under certain circumstances, the obligation to return capital previously distributed to it) and money or other property wrongfully paid or conveyed to such Limited Partner on account of its capital contribution.

3. The offer and sale of limited partnership interests in the Partnership to the Limited Partners is exempt from the registration requirements of the Securities Act of 1933, as amended.

Cooley Godward Castro Huddleson & Tatum

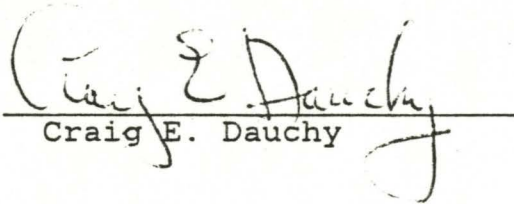
Page 3

This opinion is intended solely for your benefit and is not to be made available to or be relied upon by any other person, firm, or entity without our prior written consent.

Very truly yours,

COOLEY, GODWARD, CASTRO,
HUDDLESON & TATUM

By


Craig E. Dauchy

CED/DWF637(6):wp

Cooley Godward Castro Huddleson & Tatum

Attorneys at Law

June 30, 1988

*One Maritime Plaza
20th Floor
San Francisco CA 94111
(415) 981-5252
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COOLEY SFO
FAX: (415) 951-3699*

To the Limited Partners of
Columbine Venture Fund II, L.P.
Listed on Exhibit A

*Five Palo Alto Square
4th Floor
Palo Alto CA 94306
(415) 494-7022*

We have acted as counsel for Columbine Venture Fund II, L.P., a Delaware limited partnership (the "Partnership"), in connection with the organization of the Partnership. We have also represented the General Partner and the partners of the General Partner in connection with this transaction and have represented and may represent such parties in other matters. You have requested our opinion on the classification for federal income tax purposes of the Partnership as a partnership and not as an association taxable as a corporation. Except as otherwise defined herein, capitalized terms used but not defined herein have the meanings given them in the Limited Partnership Agreement of the Partnership, dated June 30, 1988 (the "Agreement").

In forming our opinion we have relied upon the following representations, which we have accepted as true, and have examined and relied upon copies of all referenced documentation, which we have accepted as complete and accurate:

(a) Columbine Venture Management II general partnership agreement dated June 30, 1988, which has been submitted to us, and the representation of the partners of the General Partner that they have adhered to and will at all times adhere to the provisions of that agreement in the General Partner's operations;

(b) The representations of the partners of the General Partner as to their net worths. Also, their representations that their net worths are adequate to satisfy any additional capital requirements of the General Partner's business, including its activities as general partner of the Partnership.

Page 2

(c) The Agreement;

(d) The representations of the General Partner and its partners that the General Partner will cause the provisions of the Agreement to be adhered to in the operation of the Partnership; and

(e) The representations of the General Partner and its partners that the General Partner will not cause the Partnership to elect to be excluded from the provisions of Subchapter K (relating to the taxation of partners and partnerships) of the Internal Revenue Code of 1986 (the "Code").

We disclaim an opinion as to the validity of any such represented or assumed facts. To the extent the actual facts are different from those relied upon herein, our opinion should be disregarded as it might be different under the actual facts than as stated below.

Our opinion is expressed with respect only to the federal income tax laws of the United States of America. We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any other jurisdiction are applicable to the subject matter hereof. We must caution that our opinion involves interpretations of and relies upon Regulations of the Department of the Treasury ("Regulations") and Treasury administrative pronouncements in areas in which the federal income tax statutes do not establish definitive objective standards and court decisions have not yet established authoritative tests from the statutes' provisions. In addition, Regulations and administrative pronouncements are not binding upon the courts and may be changed by the Department of the Treasury, with retroactive as well as prospective effect.

We caution further that proposals have been made for legislative changes in the statutes affecting the determination of whether a limited partnership for non-tax purposes is classified as a partnership or an association taxable as a corporation for federal income tax purposes. It is not possible to know whether such proposals will be enacted, or, if enacted, what effect, if any, they would have on our opinion.

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OPINION

On the basis of the foregoing, in reliance thereon and with the foregoing qualifications, we are of the opinion that, under the current Regulations, the Partnership will be classified as a partnership and not as an association taxable as a corporation within the meaning of that term under Section 7701(a)(2) of the Code and Subchapter K of Subtitle A of the Code.

We express no opinion other than as stated immediately above as our opinion, and neither that opinion nor any prior statements above are intended to imply or be an opinion on any other matters.

This opinion is intended solely for your benefit and is not to be made available to or be relied upon by any other person, firm, or entity without our prior written consent. An opinion of counsel represents only that counsel's best legal judgment and has no binding effect or official status of any kind. There can be no assurance that the Internal Revenue Service might not successfully contest in the courts an opinion expressed by counsel.

Very truly yours,

COOLEY, GODWARD, CASTRO,
HUDDLESON & TATUM

By 
Susan Cooper Philpot

SCP/DWF639(10)/wp

EXHIBIT A

Schedule of Partners

Public Employees
Retirement Association
of Colorado
1300 Logan Street
Denver, CO 80203
Attn: Norman G. Benedict
Txpr. I.D. No.:
84-6000472

Fire and Police
Pension Association
of Colorado
5290 DTC Parkway
Suite 100
Englewood, CO 80111
Txpr. I.D. No.:
74-2075196

Boston Safe Deposit
& Trust Company as
Trustee for the John
Deere Pension Trust
31 St. James Avenue
5th Floor
Boston, MA 02116
Attn: Guy M. Holappa
Txpr. I.D. No.:
13-6295483

Lutheran Brotherhood
625 4th Avenue South
Minneapolis, MN 55415
Attn: Investments
Txpr. I.D. No.:
41-0385700

Mellon Bank, N.A. as
Trustee of Account
Number 361-554
One Mellon Bank Center
Suite 3925
Pittsburgh, PA 15258-0001
Attn: Don J. Casturo
Derek F. Minno
Txpr. I.D. No.:
25-6018991

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Derek F. Minno
Txpr. I.D. No.:
23-6227598

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Derek F. Minno
Txpr. I.D. No.:
25-6013803

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Txpr. I.D. No.:
48-1023771

The Young Men's
Christian Association
Retirement Fund
225 Broadway
New York, NY 10007
Txpr. I.D. No.:
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The Young Men's
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225 Broadway
New York, NY 10007
Txpr. I.D. No.:
13-5562401

COLUMBINE
VENTURE FUND, LTD.

July 5, 1988

TO THE LIMITED PARTNERS OF
COLUMBINE VENTURE FUND II, L.P.
LISTED ON EXHIBIT A

This letter is in response a request by the Lutheran Brotherhood relating to its investment in Columbine Venture Fund II, L.P. (the "Partnership").

Columbine Venture Management II, the general partner of the Partnership, and its general partners, will not knowingly take any actions which would cause the partnership to become a "publicly traded partnership" as that term is defined in section 7704(b) of the Internal Revenue Code of 1986. We note, however, that actions by third parties over which we have no control may so cause the Partnership to become a publicly traded partnership, and, therefore, we can give no assurance that the Partnership will not become a publicly traded partnership in the future.

COLUMBINE VENTURE MANAGEMENT II

By: Terence E. Winters
Terence E. Winters
General Partner

EXHIBIT A

Schedule of Partners

Public Employees
Retirement Association
of Colorado
1300 Logan Street
Denver, CO 80203
Attn: Norman G. Benedict
Txpr. I.D. No.:
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Fire and Police
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Txpr. I.D. No.:
48-1023771

The Young Men's
Christian Association
Retirement Fund
225 Broadway
New York, NY 10007
Txpr. I.D. No.:
13-5562401

COLUMBINE

VENTURE FUND, LTD.

July 5, 1988

Mr. Don J. Casturo
Mellon Bank, N.A.
One Mellon Bank Center, Suite 3925
Pittsburgh, PA 15258-0001

Dear Don:

This letter is in response to Mellon Bank's request for a representation that Columbine Venture Fund II, L.P. (the "Fund") will qualify as a "venture capital operating company" as that term is defined in the U.S. Department of Labor regulations relating to Plan Assets.

We believe that the way we have operated our business with respect to our existing partnership, Columbine Venture Fund, Ltd., and the way we intend to operate the Fund, does and will qualify the Fund as a venture capital operating company as that term is presently defined under the Department of Labor regulations. I am sure you understand, however, that since the definition of venture capital operating company may change over time as a result of future regulatory action or interpretation, we cannot assure you that the Fund will in the future qualify as a "venture capital operating company" as such term may be defined from time to time.

COLUMBINE VENTURE MANAGEMENT II

By:



Terence E. Winters
General Partner

COLUMBINE

VENTURE FUND, LTD.

June 30, 1988

Mr. Paul Larson
YMCA Retirement Fund
225 Broadway
New York, NY 10007

Dear Paul:

This letter is in response to YMCA Retirement Fund's request for a representation that Columbine Venture Fund II, L.P. (the "Fund") will qualify as a "venture capital operating company" as that term is defined in the U.S. Department of Labor regulations relating to Plan Assets.

We believe that the way we have operated our business with respect to our existing partnership, Columbine Venture Fund, Ltd., and the way we intend to operate the Fund, does and will qualify the Fund as a venture capital operating company as that term is presently defined under the Department of Labor regulations. I am sure you understand, however, that since the definition of venture capital operating company may change over time as a result of future regulatory action or interpretation, we cannot assure you that the Fund will in the future qualify as a "venture capital operating company" as such term may be defined from time to time.

COLUMBINE VENTURE MANAGEMENT II

By: Terence E. Winters
Terence E. Winters, General Partner

COLUMBINE
VENTURE FUND, LTD.

July 5, 1988

Mr. Norman Benedict
Public Employees' Retirement
Association of Colorado
1300 Logan Street
Denver, CO 80203

Dear Norm:

This letter will confirm our understanding with respect to the application of paragraphs 7.5(a) and 7.5(c) of the limited partnership agreement (the "Agreement") of Columbine Venture Fund II, L.P. (the "Partnership"). Capitalized terms not otherwise defined have the meanings given them in the Agreement.

Under paragraph 7.5(a)(ii), if, immediately prior to a proposed distribution in kind, there are Contingent Losses in the Limited Partners' Capital Accounts that have not been previously restored, such distribution will be made to all Partners in accordance with Partnership Percentages until such time as the posting of unrealized gains relating to the distribution, as provided in paragraph 7.5(c), has restored such Contingent Losses. Thereafter, the distribution will be made 20% to the General Partner and 80% to all Partners in proportion to Partnership Percentages as provided in paragraph 7.5(a)(i).

COLUMBINE VENTURE MANAGEMENT II

By: 
Terence E. Winters
General Partner



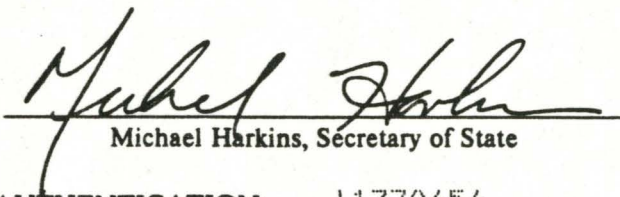
Office of Secretary of State

I, MICHAEL HARKINS, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF LIMITED PARTNERSHIP OF COLUMBINE VENTURE FUND II, L.P. FILED IN THIS OFFICE ON THE THIRTIETH DAY OF JUNE, A.D. 1988, AT 10 O'CLOCK A.M.

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738182012


Michael Harkins, Secretary of State

AUTHENTICATION: 11770656

DATE: 06/30/1988

738182012

FILED

JUN 30 1988

CERTIFICATE OF LIMITED PARTNERSHIP
OF
COLUMBINE VENTURE FUND II, L.P.

Mark H. White
10 AM
SECRETARY OF STATE

This Certificate of Limited Partnership of Columbine Venture Fund II, L.P. (the "Partnership") is being executed and filed by the undersigned General Partner (the "General Partner") to form a limited partnership under the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101 et seq.).

Article One

The name of the limited partnership formed hereby is Columbine Venture Fund II, L.P.

Article Two

The address of the registered office of the Partnership in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801, and the name and address of the registered agent for service of process on the Partnership in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

Article Three

The name and business address of the General Partner of the Partnership are:

<u>NAME</u>	<u>BUSINESS ADDRESS</u>
Columbine Venture Management II	5613 DTC Parkway Suite 510 Englewood, CO 80111

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 29th day of June, 1988.

GENERAL PARTNER:

COLUMBINE VENTURE MANAGEMENT II

By: *Terence E. Winters*
Terence E. Winters